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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,748	10/10/2001	Mark E. Phillips	480180.403	9401

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EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/975,748

Applicant(s)

PHILLIPS ET AL.

Examiner

Marlon T Fletcher

Art Unit

2837

Hz

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winsky et al. (5,739,451).

As recited in claims 1, 12, and 18, Winsky et al. disclose a method and system for the display and control of music selection in a handheld portable multi-media device, the system comprising: a housing (12) sized to be held by a user as disclosed in the abstract and as seen in figure 1; a circuit board (figure 3) within the housing; a battery power supply to provide electrical power to electrical circuitry on the circuit board as is inherent in view of figures 1 and 3; a data structure (44) to store a plurality of music data files, each music selection data file having identification data associated therewith as discussed in column 3, line 62 through column 4, line 8; a display (16) to display data comprising a playlist indicating music data files to be played; an input device (14) operable by the user to select identification data associated with desired music data files for the playlist as discussed in column 4, lines 60-64; a processor (50) responsive to the input device to select the music data files for the playlist based on the user selected identification data; a converter to receive the selected music data files and convert the selected music data files to audio data as discussed in column 4, lines 2-5; and an audio output driver (46) coupled to the converter to receive the audio data therefrom, the audio output driver further having an output and providing analog signals to the output for connection to an audio output device (52).

As recited in claims 2 and 13, Winsky et al. disclose the system, wherein the data structure contains music data files having different data format types as discussed in column 3, line 66 through column 4, line 5, wherein MIDI is preferably used; which indirectly infers that other formats may be used.

As recited in claims 3 and 14, Winsky et al. disclose the system, wherein the data associated with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist by operating the user input device to select song names and the processor generating the playlist based on the selected song names as discussed in the abstract.

Winsky et al. do not disclose a CODEC as the converter. However, CODECs are well known in the art for converting music data files into audio data. Winsky et. Al. further do not disclose metatags nor a plurality of data types.

However with respect to claims 4-8,15, 16, and 19, Official Notice is taken with regards to it being well known in the art to use Codecs as converters and Metatags for data filing.

As recited in claim 9, Winsky discloses the system comprising a selection data structure wherein the playlist is stored for subsequent use as discussed in column 4, lines 27-35.

As recited in claim 10, Winsky et al. disclose the system, wherein the processor alters the stored playlist and wherein the altered playlist is stored for subsequent use as discussed in column 4, lines 50-56.

As recited in claims 11, 17, and 20, Winsky et al. disclose the system, wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification data associated with the music data files as discussed in column 4, lines 27-31 and lines 60-64.

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***Allowable Subject Matter***

3. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Burrows is cited as pertinent, because it discloses most of the features of the present invention and specifically discloses the use of a plurality of data types, a battery, and etc...

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 703-308-0848. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 703-308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

  
Marlon T Fletcher  
Primary Examiner  
Art Unit 2837

  
MTF

August 25, 2002